

ST 04-0027-GIL 01/29/2004 ROLLING STOCK EXEMPTION

This letter answers questions regarding the Rolling Stock Exemption. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

January 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 15, 2003, in which you request information. We apologize for the delay in responding to your inquiry. We were hoping to have permanent rules adopted by this time regarding the rolling stock exemption. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am seeking an official Illinois Department of Revenue opinion regarding the following items related to the rolling stock exemption.

The following parameters apply to all questions:

1. The taxpayer farms and operates a short haul trucking service within one corporation.
2. The trucks in question primarily are utilized for short haul trucking (in state and across state line) except for a short time in which they are used for hauling the corporation's grain to the grain elevator.

Question 1: Does a trip occur when hauling the corporation's grain to the elevator or is it exempt due to the general exemption for agricultural production?

Question 2: If the corporation is paid to travel from Illinois to STATE empty, then travel from STATE to Illinois with a product, is this considered one trip or two?

Question 3: Assume the computation of the minimum 51% is completed daily and that for 1 month this percentage falls to 40%, while during the other 11 months the percentage is above 51%. Does the taxpayer owe sales tax on the purchases related to the truck during the one month the trip percentage was at 40%, or because the year ended with the truck percentage being above 51% does that result in all purchases being exempt from sales tax?

Question 4: Assume the computation of the minimum 51% is completed daily and the truck trips are above 51% on every day except the last day of the licensing period. Does ending the year below 51% taint all purchases made during the entire year, and thus all purchases must now have sales tax paid on them?

Question 5: If the determination is later made that a truck did not meet the rolling stock exemption, how does one remit the sales tax on the items purchased during the previous year? Is the remittal made on the next filing of the ST-1 line 12a & 12b, or does the taxpayer contact the vendors from whom all purchases were made during the year and ask the vendor to now re-compute these purchases with sales tax and pay the vendor the difference?

Question 6: The tracking of purchases of large items used on a truck can be done. The problem arises when the corporation purchases drums of oil, boxes of bolts, small items all of which will eventually be utilized on the trucks, but are hard to track to a particular truck; lets call them unallocated repair and maintenance. What if 1 of 6 trucks is deemed below the 51%, is it acceptable to take 1/6 of the unallocated repair and maintenance items and now pay tax on them on the ST-1, line 12a or does every nut and bolt purchased need to be positively tracked to a particular truck?

Question 7: If the taxpayer utilizes a truck on the farm to move a load of dirt from one location to another without utilizing any roads, would this count as a trip?

Please send your response in writing.

DEPARTMENT'S RESPONSE:

Please note that the Department has had emergency rules filed regarding the Rolling Stock Exemption. See 86 Ill. Adm. Code 130.340. Subsection (g)(1) of Section 130.340 of those emergency rules provides some examples of application of the 51% trips test. The 51% trips test is applied to each consecutive 12-month period. Please be aware that a movement on a farm from one point to another would not generally be considered a trip under the Rolling Stock Exemption. If a determination is made that a vehicle did not meet the 51% trips test in the first 12-month period, the owner incurs tax, penalty and interest from the date of purchase on the purchase price of the vehicle or part. For instances when the vehicle is not used in a qualifying manner in a subsequent 12-month period, see subsection (g)(1)(F) of Section 130.340 of the Department's emergency rules. Such persons should report the use tax, and any applicable penalties and interest on the ST-1 Sales and Use Tax return.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk